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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/828,351	04/21/2004	Manja Ahola	TUR-140-A	6705

32954 7590 10/11/2006

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EXAMINER

TRAN, SUSAN T

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 10/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/828,351

Applicant(s)

AHOLA ET AL.

Examiner

Susan T. Tran

Art Unit

1615

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 September 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

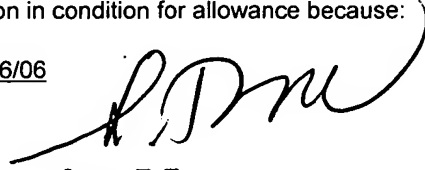
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: 29 and 30.
Claim(s) rejected: 23-28 and 31.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____
12. ☒ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). 05/06/06
13. ☐ Other: _____


Susan T. Tran
Primary Examiner
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Applicant's arguments filed 09/01/06 have been fully considered but they are not persuasive.

Applicant argues that Ducheyne fails to disclose or suggest the complete dissolution of the silica-xerogel, and none of the examples in Ducheyne indicate that its silica glass carriers completely dissolve when in contact with simulated body fluid. In response to applicant's argument that none of the examples in Ducheyne show the carriers completely dissolve when contact with simulated body fluid, it is noted that Ducheyne is relied upon for the teachings within the four-wall patent. Ducheyne cannot be limited to his best mode as described in the examples.

In response to applicant's argument that Ducheyne does not teach the complete dissolution of the silica-xerogel, it is noted that the instant claims do not preclude the bioactive agent to release through the pores of the silica-based gel. Nor, do the instant claims require a total dissolution of the bioactive agent by dissolving the silica-xerogel to completely release the bioactive agent in a very even fashion. Applicant's attention is called to the teaching at column 14, lines 14-37, Ducheyne teaches in order for sol-gel to be an effective carrier for biologically active molecules, sol pH and other factors affect the gelling time of the sol...there are instances when greater porosity may be desirable to achieve a more rapid degradation of the carrier to facilitate the release of larger molecules. Thus, it would have been obvious to one of ordinary skill in the art to modify the porosity of the gel to obtain the desired release rate. Furthermore, even if it were assumed, for the sake of argument, that Ducheyne does not teach the complete dissolution of the silica-xerogel, applicant has not shown any unexpected and/r unusual

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results over the limitation "complete dissolution". This is because Ducheyne teaches the property desired by the applicant, *e.g.*, a carrier for controlled release of biologically active molecules over time. Furthermore, the phrase "controllably releasing said biologically active agent by complete dissolution of said silica-xerogel" is not patentably distinct from the prior art. By "controllably release", does it mean the xerogel stay completely unreleasable over a desired period of time, and then quickly and completely dissolved to release the biologically active agent? Hence, the rejection over Ducheyne et al., in view of Einarsrud is maintained.